IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5060 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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LALITABEN D/O, LATE SHRI AMRUTLAL GOVINDBHAI LEWUA

Versus

STATE OF GUJARAT

Appearance:

MR RAJESH R DEWAL for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/08/2001

ORAL JUDGEMENT

#. Rule. Mr.Joshi, learned AGP waives service of rule for the respondents. By consent of the parties, the matter is taken up for final hearing today.

#. The father of the petitioner died while in Government service on 29.7.1992. The petitioner was minor at the relevant time and after becoming major, she had applied for appointment on the ground that looking to the income of the family of the deceased it is not possible for them

to maintain themselves and that there is no earning member in the family. The appropriate application, therefore, for getting compassionate appointment was made on behalf of the petitioner. Along with the application, the petitioner had also submitted necessary documents i.e. School Leaving Certificate etc. On behalf of the Referal Hospital, Mansa, District Gandhinagar, decision was taken on 6.6.2000 by which the prayer of the petitioner was rejected on the ground that there is no evidence to show that the petitioner was residing with the deceased at the time of his death and no satisfactory evidence is produced in this behalf. On that ground alone, the application of the petitioner was rejected.

#. At the time of hearing, it was argued on behalf of the petitioner that the petitioner is unmarried daughter of the deceased and that all throughout she has stayed with the deceased. It was submitted that the petitioner is not married till today. The petitioner has also produced some documents in the nature of the certificate of the Mamlatdar regarding Ration Card which at page 30 of the petition where the name of the petitioner is shown.

#. It is required to be noted that the application of the petitioner was not rejected on any other ground such as delay or income of the family of the deceased, but only ground on which the application was rejected is that the petitioner has not produced any evidence about the fact that she was residing with the deceased father.

#. In an identical case, this Court (Coram: Ravi R.Tripathi, J) in the case of Satishkumar R. Patel Vs. DDO, Baroda, reported in 2001(1) GLR, 270, has taken the view that, on such technical ground, the application was not required to be rejected and the concerned authority was directed to reconsider the case of the petitioner of the aforesaid matter.

#. In my view, when the petitioner has produced the certificate of the Mamlatdar showing that she was residing with her father and also considering the fact that she is not married, conjecture on the part of the authority is not valid for coming to the conclusion that she was not residing with her deceased father. The aforesaid action is unsustainable. Under these circumstances, the decision rejecting the application of the petitioner only on the aforesaid ground that the petitioner was not residing with her deceased father is required to be quashed and set aside and the matter is required to be sent back to the authority for

reconsidering the case of the petitioner for appointment on compassionate ground in accordance with law. The matter is accordingly remanded back to the authority to take fresh decision. The authority may take appropriate decision within a period of two months from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.B.Majmudar,J)
(pathan)